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No. 91-264

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

THOMAS A. WILLIAMS,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eighth Circuit

REPLY BRIEF OF PETITIONER

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Petitioner Thomas A. Williams hereby submits his Brief in Reply to the Memorandum in Opposition filed by the Solicitor General on behalf of the United States.

PETITIONER'S CLAIMS ARE RIPE FOR REVIEW BY THIS COURT IN THAT THEY PRESENT A LIVE CASE OR CONTROVERSY AND THEIR RESOLUTION MAY BE DISPOSITIVE TO FURTHER PROCEEDINGS IN THIS CASE

In its Memorandum in Opposition, the United States does not address Petitioner's claims on the merits; rather, it asserts only that Petitioner's contentions "are not presently ripe for review by this Court." Memorandum in Opposition at 3. The United States

argues that review by the Court would be premature at this time because Petitioner, if convicted, will then be able to present his contentions to the Court in a petition for a writ of certiorari. The position of the United States is in error on both legal and policy grounds.

The issue of ripeness implicates both the existence of a live "case or controversy" as well as prudential considerations. *Duke Power Co. v. Carolina Environmental Study*, 438 U.S. 59, 81-82 (1978) (direct appeal from decision of district court declaring act limiting liability of nuclear power plants unconstitutional held ripe). In the instant case, it cannot be disputed that a live case or controversy exists between Petitioner and the United States, in that Petitioner has been indicted under the Bank Secrecy Act, will sustain immediate injury from his prosecution under the disputed statute, "and [ ] such injury would be redressed by the relief requested." *Id.* at 81.

With respect to the prudential considerations embodied in the ripeness doctrine, the reasoning of the *Duke Power Co.* Court is also fully applicable to this case:

> The prudential considerations embodied in the ripeness doctrine also argue strongly for a prompt resolution of the claims presented. . . . [D]elayed resolution of these issues would foreclose any relief from the present injury suffered by Appellees — relief that would be forthcoming if they were to prevail in their various challenges to the Act. . . .
>
> In short, all parties would be adversely affected by a decision to defer definitive resolution of the constitutional validity *vel non* of the Price-Anderson Act. Since we are persuaded that "we will be in no better position later than we are now" to decide this question, *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 143-145 (1974), we hold that it is presently ripe for adjudication.

Duke Power Co., 438 U.S. at 82.

There have been numerous cases before the Court in which certiorari has been granted even though the judgment below was not one that terminated the proceedings. The Court granted certiorari in those cases because, as here, the Petition involved an issue "fundamental to the further conduct of the case." *United States v. General Motors Corp.*, 323 U.S. 373, 377 (1945) (certiorari granted where circuit court of appeals remanded for trial action for just compensation under Fifth Amendment; Court noted that federal courts were in conflict); *see also Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723 (1975) (certiorari granted in Rule 10b-5 action where district court dismissed complaint, plaintiff appealed and Ninth Circuit reversed); *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682 (1949) (certiorari granted where court of appeals reversed dismissal on jurisdictional grounds of complaint that defendant refused to sell contracted-for coal); *Land v. Dollar*, 330 U.S. 731 (1947) (certiorari granted where court of appeals reversed district court's dismissal of complaint seeking to restrain defendants from selling stock allegedly illegally withheld from plaintiffs). As the Court recognized in *Gillespie v. United States Steel Corporation*, 379 U.S. 148, 153 (1964) (certiorari granted with respect to Sixth Circuit opinion affirming the striking of certain portions of complaint for damages for death of seaman):

> [I]t seems clear now that the case is before us that the eventual costs, as all the parties recognize, will certainly be less if we now pass on the questions presented here rather than send the case back with those issues undecided.

The costs to defendants in criminal proceedings of deferring resolution of pivotal legal issues is even greater than those faced by the parties in the above civil suits. Short of conviction itself, there are no burdens heavier in our judicial system than the pendency and defense of a criminal indictment. Thus, the Court in recent years has granted certiorari in criminal cases with procedural histories identical to the case at bar. In *Wayte v.*

United States, 470 U.S. 598 (1985), for example, the Ninth Circuit reversed the district court's dismissal of an indictment against petitioner for violation of the Selective Service Act. This Court granted Wayte's petition for a writ of certiorari on the issue of selective prosecution, "recognizing both the importance of the question presented and a division in the circuits." *Wayte*, 470 U.S. at 607; *see also Bank of Nova Scotia v. United States*, 487 U.S. 250 (1988) (Supreme Court affirmed Tenth Circuit's reversal of dismissal of indictment); *Adamo Wrecking Co. v. United States*, 434 U.S. 275 (1978) (on grant of certiorari, Supreme Court reversed Sixth Circuit decision reversing dismissal of indictment under EPA emission standard).

Here, as in *Wayte*, the circuits are sharply divided as to the construction of the Bank Secrecy Act. Furthermore, the importance of this question to further proceedings in this case cannot be overstated. Should the Court rule in Petitioner's favor, such ruling will effectively dispose of all criminal proceedings against Petitioner. For the Court to withhold its ruling on this issue and allow the case to proceed to trial and judgment will result in additional and arguably unnecessary burden and expense for both the Petitioner and the United States. Both parties will be compelled to undergo trial and subsequent appellate proceedings in the Eighth Circuit and again in this Court. Petitioner will be subjected to the continued cloud of indictment and prosecution. He will face potential conviction and possibly incarceration before his Petition again reaches this Court. If convicted, Petitioner will be required to take the futile step of appealing this issue to the Eighth Circuit Court of Appeals, where the May 13, 1991 decision will remain the law of the case absent action by this Court. In the meantime, the disparate interpretations of the Bank Secrecy Act across the country will mean that prosecutions will continue to be accidents of geography rather than the products of a consistent, reasoned construction of the statute. As stated in *Duke Power Co.*, *supra*, this Court "will be in no better

position later than . . . now" to decide the questions of law raised by Petitioner.

CONCLUSION

Petitioner therefore submits that the United States' ripeness argument is wrong as a matter of law and ill-advised as a matter of judicial policy and simple fairness. Petitioner respectfully requests that his Petition for a Writ of Certiorari be granted.

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